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No. 82-698

In the Supreme Court of the United States

OCTOBER TERM, 1982

WAYNE N. HOWARD and MICHAEL E. TRAUSCHT,
Petitioners,

v.

WALTER ROBERT TAYLOR,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals For the Tenth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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December, 1982

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WAYNE N. HOWARD and MICHAEL E. TRAUSCHT,
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v.

WALTER ROBERT TAYLOR,
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On Petition for a Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

STATEMENT OF THE CASE

Plaintiff, Respondent here, is a monk who resides at an Old Catholic Monastery in a suburb of Oklahoma City. He was taken against his will from his monastery by Oklahoma County Sheriff's Deputies to a hearing before the District Court of Oklahoma County, State of Oklahoma, for a "temporary guardianship" hearing July 15, 1976. At the time he was 21 years old. Defendants sought Plaintiff's removal from his monastery in order that he could be "deprogrammed", a process which involves use of "confrontative" techniques of "counseling" with the goal of the "deprogrammee's" renunciation of his religious beliefs.

On July 14, 1976, lawyers for the applicant in the "temporary guardianship" proceeding conferred with the

Associate District Judge to whom the application was eventually presented, Judge John A. "Tony" Benson, who then contacted the Probate Judge and requested that he be allowed to hear the matter. The "temporary guardianship" proceeding was then filed. Judge Benson then conducted a hearing July 15, 1976, without notice to Plaintiff, and wholly in Plaintiff's absence which culminated in Judge Benson's ordering the Plaintiff taken into custody. Judge Benson had decided to order that a temporary guardian of Plaintiff's person be appointed so that it could be determined if Plaintiff were under the influence of a religious cult. Judge Benson stated that he wanted the Plaintiff taken into custody "so that [Plaintiff] could be given notice of a [permanent] guardianship hearing. . . ."

Upon Plaintiff's being taken to the Oklahoma Court, his counsel of choice was excluded from the hearing, and at the close of the "temporary guardianship" hearing, the same day Plaintiff was picked up by sheriff's deputies, Judge Benson, though finding that Plaintiff appeared "normal in every respect", formally entered an "Order Appointing Temporary Guardianship of the Person" because, according to Judge Benson:

> ". . . the right of [Plaintiff's] father and . . . family to know [Plaintiff] decided . . . to spend the rest of [his] life away from them secluded in a monastery . . . probably overrides any individual right [Plaintiff] might possibly have on a temporary basis . . . to be free from . . . custody."

The July 15, 1976, order provided:

> "1. Notice of the time and place of hearing is not required.

2. Dr. Walter Taylor is appointed the temporary Guardian of the Person of Petitioner's child, to-wit: Walter Robert Taylor and that temporary Letters of Guardianship issue.

3. The Temporary Guardian of the person shall have power to: (a) take said proposed ward into Petitioner's personal custody to have proposed ward counselled, examined, and treated by persons including, but not limited to physicians, psychiatrists, psychologists, social workers and lay persons; (b) to keep said ward in Petitioner's custody, even in the event said ward wishes to leave said custody; and (c) such further powers as are necessary to exercise those above granted.

4. Further hearing in this matter will be held at August 13, 1976 at 3:00 P.M. at which time the ward is directed to show cause if any the ward has, why the Petitioner, Dr. Walter Taylor should not be appointed permanent Guardian of the ward's person. . . ."

On authority of Judge Benson's "temporary guardianship" order (hereafter "Judge Benson's Order"), Plaintiff was taken that same day, July 15, 1976, from Oklahoma City, Oklahoma, to Akron, Ohio. He was held for approximately one week in Akron where he was kept at a motel under constant guard. There he underwent "deprogramming": (1) "deprogrammers" yelled at him constantly; (2) they kept fresh "deprogrammers" yelling at him by switching off in crews; (3) they said they would have him tracked down by the state patrol if he escaped, and that they would have him thrown in jail and "deprogrammed" in jail; (4) the "deprogrammers" threatened to have the police close down Plaintiff's monastery, to have the

"temporary guardianship" made permanent and have the "deprogramming" continue indefinitely, to have Plaintiff committed to a mental institution and to beat him; (5) he was deprived of sleep and by innuendo he was told that he would be subjected to shock treatment; (6) he suffered severe gastritis, diarrhea and abdominal cramping, and when he complained, the "deprogramming" seemed to intensify; (7) they threw cold water on him, shined a light in his eyes, tore his monastic clothes off him, and cut his hair and beard; (8) they told him they called friends and religious leaders from a list Plaintiff had given them of people who would vouch for him, and they stated that the friends reported his religion was not legitimate. The "deprogrammers" indicated the pressure would cease if Plaintiff would renounce his religion.

July 22, 1976, the District Court of Oklahoma County, acting through a different judge than Judge Benson, entered an order declaring Judge Benson's Order void ab initio which commanded Plaintiff's return to Oklahoma City. July 23 or July 24, 1976, Plaintiff was taken from Akron to Phoenix, Arizona, where he was held, still under guard, for the "rehabilitation" phase of the "deprogramming". He escaped July 31, 1976, and returned to Oklahoma City.

Plaintiff brought the instant action against the "deprogrammers", his parents and brother seeking $300,000.00 compensatory and $3,000,000.00 punitive damages. Pursuant to agreement Plaintiff's parents and brother were dismissed prior to trial. Plaintiff sought relief on the basis of a civil conspiracy and specific legal theories which included violation of civil rights under 42 U.S.C. §§ 1983 and 1985(3),

obstruction of justice under 42 U.S.C. § 1985(2), intentional infliction of emotional distress, false imprisonment and assault and battery. He stated at paragraph 30 of his Complaint that Defendants' actions were taken "under color of law through use of the judicial system, court orders and actions of the Sheriff's office of Oklahoma County, Oklahoma." He further alleged at paragraph 37 of this Complaint that:

> ". . . [D]efendants obtained an illegal temporary guardianship in Case No. P-76-1228 based on false representations without jurisdiction; . . . defendants inflicted mental torture on Plaintiff under color of law; . . . [and] defendants perpetrated fraud upon Plaintiff and the District Court of Oklahoma County in instituting a sham proceeding, not for the purpose of determining the competency of Plaintiff, but rather to gain custody or control of Plaintiff to subject him to experimental psychological procedures to alter his religious beliefs and practices contrary to law. . . ."

Plaintiff did not allege that either Judge Benson or the Sheriff's deputies who arrested him were co-conspirators of Defendants.

The Trial Court granted partial summary judgment against Plaintiff dismissing his 42 U.S.C. § 1983 count on the basis that the requisite color of state law was not present. It granted partial summary judgment against Plaintiff dismissing the 42 U.S.C. § 1985(3) count because it concluded that Plaintiff did not allege deprivations which would give rise to Congressional authority to reach private conspiracies. It granted partial summary judgment against Plaintiff dismissing his 42 U.S.C. § 1985(2) count on the basis that a source of Congressional power to reach the private conspiracy alleged could not be identified.

Trial of the action was to a jury. At the close of the evidence the court directed a verdict against Plaintiff on his false imprisonment claim on the basis that Judge Benson's Order was a "proper" order. The court also directed a verdict against Plaintiff on the intentional infliction of emotional distress claim, holding that the court was required in the first instance to determine whether Defendants' conduct was so "extreme" and "outrageous" as to permit recovery, and in the instant action, reasonable minds could not differ: Defendants' conduct was not so "extreme" and "outrageous" as to permit the question to be submitted to a jury. The case then went to the jury solely on the theory of conspiracy to assault and batter. The jury returned a verdict in favor of the Defendants and against Plaintiff, and the court entered judgment on the verdict.

Plaintiff perfected an appeal to the United States Court of Appeals for the Tenth Circuit which, by opinion dated July 30, 1982, reversed the Trial Court's grant of summary judgment and the Trial Court's directed verdicts and judgment on jury verdict, except the Trial Court's dismissal of Plaintiff's claim based upon 42 U.S.C. § 1983. As to Plaintiff's claims based upon 42 U.S.C. §§ 1985(2) and 1985(3) the Tenth Circuit cited the position of six members of the court in *United States* v. *Guest*, 383 U.S. 745 (1966), and held that Congress had the power to reach Defendants' private conspiracy to violate rights guaranteed Plaintiff by the Fourteenth Amendment. Defendants then sought review by this Court of the Tenth Circuit's reversal of the Trial Court's grant of summary judgment dismissing Plaintiff's 42 U.S.C. § 1985 claims.

REASONS FOR DENYING THE WRIT

I. THE WRIT SHOULD NOT ISSUE BECAUSE, CONTRARY TO PETITIONERS' POSITION, RESERVATION OF A QUESTION SHOULD NOT, IN AND OF ITSELF, PROVIDE GROUND FOR ISSUANCE OF A WRIT OF CERTIORARI.

This Court has stated the considerations for governing review on certiorari in *Sup. Ct. R.* 17. Reservation of a question is not among them. *Id.* Petitioners urge as their first reason for granting the writ that the Court of Appeals based its opinion below on a point which had been reserved by this Court. As authority for their argument they cite *United States* v. *Martinez-Fuerte*, 428 U.S. 543, 545 (1976), in which the Court merely noted that the question before it had been reserved in the previous term. Reservation of a question because the facts of a particular case do not require that the question be answered should not, in and of itself, provide the basis for issuance of a writ. *See Sup. Ct. R.* 17.

II. A WRIT SHOULD NOT BE GRANTED BECAUSE, CONTRARY TO THE ARGUMENT OF PETITIONERS, THERE IS NO CONFLICT BETWEEN THE COURT OF APPEALS' DECISION AND DECISIONS OF THIS COURT.

The Court of Appeals' Opinion regarding the basis of congressional authority to reach the conspiracy alleged by Plaintiff is entirely consistent with decisions of this Court. Petitioners urge that a writ be granted because "The Tenth Circuit misconstrued, misapplied and misconceived this Court's reasoning in *United States* v. *Guest*." On the contrary, the Court of Appeals carefully analyzed and applied

United States v. *Guest*. In accordance with the position of six members of the Court in *Guest*, the Tenth Circuit held that Congress has the power to reach private conspiracies to violate Fourteenth Amendment guarantees.

Petitioners apparently assume that Plaintiff's failure to allege that Judge Benson was a co-conspirator of Defendants in attempting to coerce a renunciation by Plaintiff of his religion and lifestyle, eliminates state participation in the First and Fourteenth Amendment deprivations which Plaintiff suffered because the deprivations were thereby rendered private. They repeatedly urge that the only state involvement here is mere utilization of the judicial system.

Plaintiff stated at paragraph 20 of his Complaint:

> ". . . [T]here is no provision for temporary guardianships of adults under Oklahoma law. Such proceedings were without jurisdiction of the subject matter or the person of the Plaintiff. . . . Notwithstanding the illegal nature of the proceedings, the temporary guardianship was granted. . . ."

The Tenth Circuit analyzed: "The activity here in effect brought the state into a position which was tainted." Petitioners' Appendix at 64. The Court of Appeals further stated:

> "It is true that although the appellant does not claim that the state conspired to deprive him of his constitutional right, he does claim that the state unwittingly deprived him of those rights when the Sheriff's deputies forced Taylor to appear before Judge Benson under no apparent statutory authority and when the state court appointed his father temporary guardian without any jurisdiction whereby he was illegally

> delivered over to the defendants and was deprived of his freedom of association and his freedom to pursue his religious beliefs."

Petitioners' Appendix at 66-67.

The Tenth Circuit accurately summarized:

> "In the case at bar, however, the allegations extend beyond the private deprivation of constitutional rights. The contention is that the defendants formed a conspiracy to cause *the state to participate and deprive the plaintiff* of his liberty without due process and to interfere with his first amendment freedom of association and religion. . . ."

Petitioners' Appendix at 55-56.

Petitioners argue that Guest provides no authority for the Court of Appeals' holding because the degree of state action there was the equivalent of active participation by the state. In addition to citation to concurring opinions representing the view of six of the Justices in *Guest*, the Tenth Circuit relied upon the opinion of the Court, stating, "If, as Mr. Justice Stewart said in *United States* v. *Guest*, *supra*, that some limited state involvement may suffice, it clearly follows that the extensive state involvement in this case would certainly satisfy a necessary requirement." Petitioners' Appendix at 64-65. The reference was to Justice Stewart's statement for the Court that the Court has found state action in a variety of situations ". . . even though the participation of the state was peripheral, or its action was only one of several co-operative forces leading to constitutional violation." 383 U.S. at 755-56. As authority for that statement the Court cited *Shelley* v. *Kraemer*, 334 U.S. 1 (1948), as an example. There the argument was made that judicial enforcement of racially restrictive

covenants did not constitute state action. This Court rejected the argument:

> "The difference between judicial enforcement and non-enforcement is the difference between being denied rights . . . and being accorded full enjoyment of those rights on an equal footing."

Id. at 19. There was a much stronger argument in *Shelley* that the state's participation through the judiciary was disinterested and indirect because in enforcing the restrictive covenants the state courts functioned as they always function. Here, in addition to providing the vehicle for constitutional deprivations through his "temporary guardianship" order, Judge Benson acted in the absence of all jurisdiction.

Petitioners incorrectly conclude: "Utilization of the state judicial system, absent some direct participation or sharing of the conspiratorial motives by the state judicial officer, is at best limited state involvement and not the extensive type of participation discussed in *United States* v. *Guest*." Judge Benson was not alleged to have sought to force Plaintiff to renounce his religion. However, Judge Benson, in the absence of any authority, patently intended that Plaintiff be separated from his fellow monks and not be allowed to practice his religion for the period of the "deprogramming". Judge Benson's involvement, though not characterized as conspiratorial, constitutes state participation in the deprivation of Plaintiff's First and Fourteenth Amendment rights. The fact that Judge Benson's role may have been that of an ignorant participant or as a dupe of Defendants, as opposed to having been purposeful in the conspiratorial sense, does not take this case outside the ambit of this Court's teachings in *United States* v. *Guest*.

III. CERTIORARI SHOULD BE DENIED BECAUSE, CONTRARY TO THE ARGUMENT OF PETITIONERS, THE DECISION BELOW DOES NOT CONFLICT WITH THE DECISIONS OF OTHER COURTS OF APPEALS REGARDING 42 U.S.C. § 1985.

Contrary to Petitioners' assertion that the decision of the Court of Appeals here conflicts with decisions of other Courts of Appeals regarding 42 U.S.C. § 1985, the Tenth Circuit's opinion below is basically compatible with the Courts of Appeals cases cited by Petitioners when each case is limited to its own facts: *Phillips* v. *Trello*, 502 F.2d 1000 (3d Cir. 1974); *Bellamy* v. *Mason's Stores, Inc.*, 508 F.2d 504 (4th Cir. 1974); *Dombrowski* v. *Dowling*, 459 F.2d 190 (7th Cir. 1972); *Means* v. *Wilson*, 522 F.2d 833 (8th Cir. 1975); *Taylor* v. *Nichols*, 558 F.2d 561 (10th Cir. 1977); *Weise* v. *Syracuse University*, 522 F.2d 397 (2d Cir. 1975); *Cameron* v. *Brock*, 473 F.2d 608 (6th Cir. 1973); *Lopez* v. *Arrowhead Ranches*, 523 F.2d 924 (9th Cir. 1975); *Richardson* v. *Miller*, 446 F.2d 1247 (3d Cir. 1971); *Action* v. *Gannon*, 450 F.2d 1227 (8th Cir. 1971).

Phillips v. *Trello*, 502 F.2d at 1005, relies on *Dombrowski* v. *Dowling*. 459 F.2d at 194-95. In its opinion below (Petitioners' Appendix at 65-66), the Tenth Circuit specifically relied upon Justice Stevens' concurring opinion in *Great American Sav. & Loan Ass'n* v. *Novotny*, 442 U.S. 366, 383-84 (1979), which also relied upon *Dombrowski* v. *Dowling*, 459 F.2d at 194-96. *Dombrowski* held that "state involvement" was necessary to reach Fourteenth Amendment deprivations. 459 F.2d at 195. Likewise *Bellamy* v. *Mason's Stores, Inc.* cited *United States* v. *Guest* and held that "some state involvement is necessary" to reach Four-

teenth Amendment deprivations. 508 F.2d at 506. There was considerable "state involvement" in the instant action. Petitioners' Appendix at 45-46, 54-56, 64-65, 66-68.

The remaining cases cited by Petitioners in support of their argument that the opinion below conflicts with other Courts of Appeals decisions so differ factually from the instant action that they are of little or no value. *Means* v. *Wilson* held that the right to vote in an Indian tribal election is protected from private conspiracies. 522 F.2d at 839. The complaints in *Taylor* v. *Nichols*, 558 F.2d at 567-68, and *Lopez* v. *Arrowhead Ranches*, 523 F.2d at 926-27, were dismissed because of the plaintiffs' failure to allege a class-based animus. In *Cameron* v. *Brock*, where a sheriff and his deputies were named as defendants, the determinative issue was whether supporters of a political candidate could constitute a class protected by the equal protection clause. 473 F.2d at 610. The court in *Weise* v. *Syracuse University* stated without elaboration that ". . . § 1985(3) embraces a limited category of private conspiracies, and that there is no state action requirement." 522 F.2d at 408. 42 U.S.C. § 1985(3) reached a private conspiracy in *Richardson* v. *Miller* because there was a racial animus. 446 F.2d at 1249. Purely private disruption of a worship service was reached under 42 U.S.C. § 1985(3) in *Action* v. *Gannon* because, according to the court, the Fourteenth Amendment protected the plaintiffs' First Amendment rights of freedom of assembly and worship. 450 F.2d at 1234-35. A concurring opinion argued that the conduct could be reached because a racial animus was involved. *Id.* at 1239. *Action* v. *Gannon* may well have been incorrectly decided, but it does not conflict with the Court of Appeals' decision in the instant action.

Contrary to Petitioners' assertion, the cases they cite do not support the position that there are conflicts within the circuits. The holding of the Eighth Circuit in *Action* v. *Gannon* and in *Means* v. *Wilson* that the private conspiracies there reviewed were subject to 42 U.S.C. § 1985(3) do not conflict. The Third Circuit's holding in *Phillips* v. *Trello*, 502 F.2d at 1005, that a § 1985(3) claim was not stated because the facts before it did not encompass a racial animus or state involvement does not conflict with its decision in *Richardson* v. *Miller*, where it found a racial animus. 446 F.2d at 1249. Finally, the Tenth Circuit's holding regarding 42 U.S.C. § 1985(3) in *Taylor* v. *Nichols* which rested on the absence of a class-based animus does not conflict with its opinion in the instant action where a class-based animus was identified. *See* Petitioners' Appendix at 50-52.

IV. THE WRIT SHOULD BE DENIED BECAUSE, EVEN ASSUMING PETITIONERS' ARGUMENT THAT THE STATE INVOLVEMENT HERE IS INSUFFICIENT ARGUENDO, THEIR CONSPIRACY CAN BE REACHED UNDER 42 U.S.C. §§ 1985(2) AND 1985(3) BECAUSE THEY DEPRIVED PLAINTIFF OF HIS RIGHT TO INTERSTATE TRAVEL.

The right to interstate travel is a source of Congressional power to reach private conspiracies under 42 U.S.C. § 1985(3). *Griffin* v. *Breckenridge*, 403 U.S. 88, 106 (1971). Both at trial and on appeal Plaintiff urged that right as a basis for Congressional authority to reach the conspiracy involved in the instant action but his position was rejected:

> ". . . [P]laintiff did not allege in his Complaint that an object of the defendants' conspiracy was to de-

> prive him of his right to travel interstate. He now urges this as a basis to uphold his claim under § 1985 (3). However, the facts do not lend themselves to a claim of interference with this right."

Petitioners' Appendix at 53-54, *see also* Petitioners' Appendix at 139-41, 148-49. The Court of Appeals decided the question incorrectly. Thus the outcome in this Court regarding the viability of Plaintiff's 42 U.S.C. § 1985 claims should be the same even if all the questions presented by Petitioners were decided in their favor.

It is unnecessary to plead Congressional authority under 42 U.S.C. §§ 1985(2) and 1985(3) to reach the conspiracy alleged. *Fed. R. Civ. P.* 8(a)(2) requires only a "short and plain statement" of the pleader's claim. It would be anachronistic to hold that the Federal Rules of Civil Procedure require a plaintiff to state in his complaint "magic" language that a specific constitutional provision proscribes a specific conspiratorial objective as the basis of Congressional authority to reach the conspiracy. *Cf. Conley v. Gibson*, 355 U.S. 41, 47-48 (1957) (the Federal Rules of Civil Procedure do not require pleading of specific facts to support general allegations of discrimination). The purpose of pleading is to facilitate a proper decision on the merits." *Id.*

The Complaint, at paragraphs 21-23 and 26, states that the Plaintiff was held captive in Akron, Ohio, and Mesa, Arizona, and did not arrange for escape to Oklahoma City, Oklahoma, until July 31, - August 1, 1976. At paragraphs 28 and 35 it states specifically that Defendants conspired to deprive Plaintiff of his freedoms of liberty and association and to keep Plaintiff from attending court in the Dis-

trict Court of Oklahoma County, Oklahoma, July 28, 1976. Defendants clearly prevented Plaintiff's free travel from state to state.

A predominate purpose of "deprogramming" was Plaintiff's confinement to prevent his return to his church. That confinement occurred primarily in Ohio and Arizona. Plaintiff's monastery is located in Oklahoma. Clearly Defendants intended that Plaintiff not be allowed to exercise his right to interstate travel to associate with his friends at his monastery. They actually restricted Plaintiff's travel and association.

The complaint in *Griffin* v. *Breckenridge* involved allegations that a conspiracy had been inspired by the erroneous belief that an associate of plaintiff who merely lived out of state was a civil rights worker. This Court held:

> "Under these allegations it is open to the . . . [plaintiffs] to prove at trial that their federal right to travel interstate was one of the rights meant to be discriminately impaired by the conspiracy, that the conspirators intended to drive out-of-state civil rights workers from the State, or that they meant to deter [plaintiffs] from associating with such persons. This and other evidence could make it clear that . . . [plaintiffs] had suffered from conduct that Congress may reach under its power to protect the right to interstate travel."

403 U.S. at 106.

Contrary to the holding of the Court of Appeals and of the Trial Court, a complaint need not allege the source of congressional power to reach a Section 1985 conspiracy,

or allege in so many words that an object of the conspiracy was to prevent travel among and between the several states. The complaint in *Griffin* v. *Breckenridge* did not. 403 U.S. at 89-92. *See Ward* v. *Connor*, 657 F.2d 45, 48 (4th Cir. 1981), *cert. denied*, 102 S.Ct. 1253 (1982).

The Court of Appeals correctly decided that state involvement in the instant action was sufficient to support an action under 42 U.S.C. §§ 1985(2) and 1985(3). It incorrectly found that a deprivation of Plaintiff's right to interstate travel would not support the same claim. The crowded docket of this Court should not be further burdened by issuance of a writ of certiorari to review a case in which the same ultimate result should be reached even if Petitioners' questions presented were all decided in their favor.

CONCLUSION

For these reasons Walter Robert Taylor, Respondent, prays that Petitioners' Petition for Writ of Certiorari to the United States Court of Appeals for the Tenth Circuit be denied.

Respectfully submitted,

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December, 1982

CERTIFICATE OF SERVICE

The undersigned John C. McMurry, a member of the Bar of this Court and counsel of record for Walter Robert Taylor, Respondent herein, hereby certifies that on the 3rd day of December, 1982, he caused to be served the foregoing Brief in Opposition to Petition for Writ of Certiorari on all parties by mailing three copies thereof by First Class Mail, postage prepaid, to each of their counsel of record, addressed as follows:

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